

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CV-22538-ALTMAN/REID

PIERCE ROBERTSON, *et al.*,

Plaintiffs,

v.

MARK CUBAN, *et al.*,

Defendants.

_____ /

DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL
THE UNREDACTED VERSION OF DEFENDANTS' REPLY MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927 AND
SUPPORTING EXHIBITS BECAUSE THEY CONTAIN REFERENCES TO
CONFIDENTIAL INFORMATION

Defendants MARK CUBAN and DALLAS BASKETBALL LIMITED d/b/a DALLAS MAVERICKS, by and through undersigned counsel and pursuant to Southern District of Florida Local Rule 5.4(b)(1), file this Motion for Leave to File Under Seal the Unredacted Version of Defendants' Reply Memorandum of Law in Support of their Motion for Sanctions Under 28 U.S.C. § 1927 *and* Supporting Exhibits (hereinafter the "Motion to Seal"). As grounds therefor, Defendants state as follows:

1. Contemporaneously herewith, Defendants will be filing (i) a Reply Memorandum of Law in Support of their Motion for Sanctions Under 28 U.S.C. § 1927 (the "Section 1927 Reply"), and (ii) exhibits in support of the Section 1927 Reply, (the Section 1927 Reply, collectively with the supporting exhibits, the "Confidential Filings"). The Confidential Filings contain references to information that has been designated by either side as Confidential under the

Stipulated Protective Order entered by Magistrate Judge Reid on December 21, 2022. [ECF No. 65].¹

2. Therefore, for filing purposes, Defendants have redacted from the Confidential Filings the information the parties' designated as Confidential and that is covered by the Stipulated Protective Order. *See* S.D. Fla. L.R. 5.4(b)(1); S.D. Fla. CM/ECF Rule 9B.

3. The at-issue protected-as-Confidential information consists of certain testimony taken at the depositions of two named Plaintiffs (Rachel Gold and Pierce Robertson), certain testimony from non-party Stephen Ehrlich's deposition, and Plaintiffs' Voyager account information and addresses, all of which have been designated as Confidential. For example, the Section 1927 Reply discloses documents produced by Voyager, a third party, and further cites to deposition testimony the parties have designated as Confidential. The Section 1927 Reply also discloses relevant Voyager account information, which has also been designated as Confidential.

4. While the redactions are limited and most of the Confidential Filings will not be redacted, Defendants seek permission to file unredacted versions of the Confidential Filings under seal so that this Court is fully informed and has before it all relevant Confidential information prior to ruling on the now fully briefed Section 1927 Motion.²

5. The proposed duration of the requested sealing is for/until the later of (i) the parties consenting to unsealing of the information designated as Confidential, or (ii) an unsealing of any of the information designated as Confidential pursuant to the terms of the Stipulated Protective Order.

¹ Various documents, or portions thereof, produced to date have been designated as Confidential.

² Pursuant to Paragraphs 6(e) and 7(d) of the Stipulated Protective Order, the "Court and any Court staff and administrative personnel" may view material designated as Confidential and Highly Confidential. ECF No. 65 at 7-9.

6. Local Rule 5.4(b)(1) states that a party who wants to file documents and information under seal must file and serve electronically a motion seeking permission to file under seal. Such a motion must set forth the factual and legal basis for the requested sealing and describe with as much particularity as possible the documents and information to be sealed. *See* S.D. Fla. L.R. 5.4(b)(1).³

7. Where, as here, a party files a motion and other legal documents that need to include references to protected confidential information and those filings are the subject of a Local Rule 5.4(b)(1) motion to file under seal, all of the content sought to be filed under seal must be redacted until the Court has an opportunity to rule on the motion to seal. *See* S.D. Fla. L.R. 5.4(b)(1); S.D. Fla. CM/ECF Rule 9B.

8. Defendants' instant Motion to Seal and the redacted Confidential Filings are all in full compliance with Local Rule 5.4(b)(1) and CM/ECF Rule 9B.

WHEREFORE, Defendants MARK CUBAN and DALLAS BASKETBALL LIMITED d/b/a DALLAS MAVERICKS respectfully request that the Court *grant* this Motion for Leave to File Under Seal and *permit* Defendants to file under seal the unredacted versions of the Confidential Filings.

CERTIFICATE OF GOOD-FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movants/Defendants engaged with Plaintiffs' counsel in a good faith effort to resolve the issues

³ However, a motion to file under seal cannot attach or reveal the specific "content of the proposed sealed material." *Id.* Additionally, the material to be sealed "shall not be filed unless the Court grants the motion to file under seal." *Id.*; *see* S.D. Fla. CM/ECF Rule 9A ("The proposed sealed material shall not be filed unless the Court grants the motion to file under seal.").

raised in this Motion for Leave to File Under Seal. Specifically, on May 30, 2023, Defendants emailed Plaintiffs' counsel to set a time for a telephone call to discuss the relief requested in this Motion; Plaintiffs' counsel responded by email that Plaintiffs do not consent to the relief and indicated that a call was not necessary.

Respectfully submitted,

/s/ Christopher E. Knight

CHRISTOPHER E. KNIGHT, ESQ.

Fla. Bar No. 607363

Email: cknight@fowler-white.com

ESTHER E. GALICIA, ESQ.

Fla. Bar No. 510459

Email: egalicia@fowler-white.com

ALEXANDRA L. TIFFORD, ESQ.

Fla. Bar No. 0178624

Email: atifford@fowler-white.com

FOWLER WHITE BURNETT, P.A.

Brickell Arch, Fourteenth Floor

1395 Brickell Avenue

Miami, Florida 33131

Telephone: (305) 789-9200

Facsimile: (305) 789-9201

-and-

PAUL C. HUCK, JR., ESQ.

Fla. Bar No. 0968358

Email: paul@lawsonhuckgonzalez.com

LAWSON HUCK GONZALEZ, PLLC

334 Minorca Avenue

Coral Gables, Florida 33134

Telephone: (850) 825-4334

-and-

STEPHEN A. BEST, ESQ.

Pro Hac Vice

Email: sbest@brownrudnick.com

RACHEL O. WOLKINSON, ESQ.

Pro Hac Vice

Email: rwolkinson@brownrudnick.com

BROWN RUDNICK LLP

601 Thirteenth Street NW Suite 600

Washington, DC 20005

Telephone: (202) 536-1755

-and-

SIGMUND WISSNER-GROSS, ESQ.

Pro Hac Vice

Email:swissner-gross@brownrudnick.com

JESSICA N. MEYERS, ESQ.

Pro Hac Vice

Email: jmeyers@brownrudnick.com

BROWN RUDNICK LLP

Seven Times Square

New York, NY 11036

Telephone: (212) 209-4930

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 31, 2023, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I ALSO CERTIFY that the foregoing document is being served this day on all counsel of record on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Christopher E. Knight

CHRISTOPHER E. KNIGHT, ESQ.

Fla. Bar No. 607363

Email: cknight@fowler-white.com

SERVICE LIST

Adam M. Moskowitz, Esq.
Joseph M. Kaye, Esq.
Barbara C. Lewis, Esq.
Howard M. Bushman, Esq.
The Moskowitz Law Firm, PLLC
2 Alhambra Plaza, Suite 601
Coral Gables, Florida 33134
E-mail: adam@moskowitz-law.com
Email: joseph@moskowitz-law.com
Email: barbara@moskowitz-law.com
Email: howard@moskowitz-law.com

*Counsel for Plaintiffs and the Proposed
Classes*

VIA CM/ECF

David Boies, Esq.
Pro Hac Vice
Boies Schiller Flexner LLP
333 Main Street
Armonk, NY 10504
Email: dboies@bsfllp.com

*Co-Counsel for Plaintiffs and the Proposed
Classes*

VIA CM/ECF

Stephen Neal Zack, Esq.
szack@bsfllp.com
Hon. Ursula Ungaro (Retired), Esq.
uungaro@bsfllp.com
Tyler E. Ulrich, Esq.
tulrich@bsfllp.com
Boies Schiller Flexner LLP
100 S.E. 2nd St., Suite 2800
Miami, FL 33131

*Co-Counsel for Plaintiffs and the Proposed
Classes*

VIA CM/ECF

Jose M. Ferrer, Esq.
Mark Migdal & Hayden
80 S.W. 8th Street, Suite 1999
Miami, FL 33130
Email: jose@markmigdal.com

*Co-Counsel for Plaintiffs and the Proposed
Classes*

VIA CM/ECF